

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Roger Jerome Day, M.D.,

Civ. No. 23-3826 (PAM/ECW)

Plaintiff,

v.

ORDER

Keith Ellison, Tim Walz, and Dan Ganin,
in their personal and official capacities,

Defendants.

This matter is before the Court on Defendants’ Motion to Dismiss, which was filed on June 26, 2024. Local Rule 7.1(c)(2) provides that the non-moving party must file and serve its response within 21 days after the filing of a motion to dismiss. D. Minn. Local Rules 7.1(c)(2). “If a party fails to timely file and serve a memorandum of law, the court may” cancel the hearing or “take any other action the court considers appropriate.” Id. 7.1(g). Here, Plaintiff has filed neither a responsive memorandum of law in opposition to Defendants’ Motion to Dismiss, which would have been due on July 18, 2024, nor a request asking for more time to file such a response.

Therefore, the Court cancels the hearing scheduled for August 8, 2024, and dismisses Plaintiff’s complaint without prejudice for failure to prosecute. See Henderson v. Renaissance Grand Hotel, 267 F. App’x 496, 497 (8th Cir. 2008) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

Accordingly, **IT IS HEREBY ORDERED that:**

1. The hearing on the Motion to Dismiss (Docket No. 11) is **CANCELLED**;
2. Defendants' Motion to Dismiss (Docket No. 10) is **DENIED as moot**; and
2. The Complaint (Docket No. 1) is **DISMISSED without prejudice** due to Plaintiff's failure to prosecute.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 29, 2024

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge